

EXHIBIT NO. 1

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1385

United States of America

v.

James C. Carter, Appellant

(Western District of Pennsylvania (Erie) No. 02-cr-00011E)

**Present: ALITO, FUENTES, and ROSENN, CIRCUIT JUDGES.**

Motion by Appellant James C. Carter, Pro Se, for appointment of new counsel.

\_\_\_\_\_  
Rebecca Simon

Case Manager 267-299-4947

**For the Court's information, a copy of the  
Clerk's 7/30/03 Order referring the  
motion to the merits panel is attached.**

**Calendared: 10/22/03**

\_\_\_\_\_  
**ORDER**

**The foregoing motion for appointment of new counsel is denied.**

**By the Court,**

**/s/ Max Rosenn**

**Circuit Judge**

**Dated: April 1, 2004**

RLS/cc: JCT  
TWP  
KRL  
BRS

APPENDIX-B.

EXHIBIT NO. II

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1385

USA v. Carter

To: Clerk

1) Motion by Pro Se Appellant for Appointment of Counsel

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The foregoing motion is referred to the merits panel.

For the Court,

*Marcia M. Waldron*

Clerk

Dated: July 30, 2003

RLS/cc: James C. Carter

Thomas W. Patton, Esq.

Kelly R. Labby, Esq.

Bonnie R. Schlueter, Esq.

APPENDIX A, I

APPENDIX-E.3.

EXHIBIT NO. III

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1385

United States v. Carter

To: Clerk

1) Motion by Appellant Pro Se to Compel Counsel to Serve Appellant's Brief and Appendix

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The foregoing motion is denied. Under Third Circuit LAR 31.3, a litigant represented by counsel may not file a pro se brief, except in cases in which counsel has filed a motion to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Counsel has not filed such a motion in this case. However, notwithstanding the foregoing, counsel for Appellant should provide Appellant with a copy of the brief filed on his behalf for Appellant's records.

For the Court,



Clerk

Dated: May 19, 2003

RLS/cc: Mr. James C. Carter

Thomas W. Patton, Esq.

Kelly R. Labby, Esq.

Bonnie R. Schlueter, Esq.

APPENDIX-F.

MARCIA M. WALDRON  
CLERK

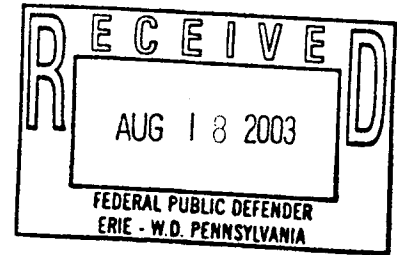
OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1790  
Website: pacer.ca3.uscourts.gov

TELEPHONE  
215-597-2995

August 13, 2003

Thomas W. Patton, Esq.  
(Bonnie R. Schlueter, Esq.  
(Kelly R. Labby, Esq.

Re: United States of America v. James C. Carter, Appellant  
No. 03-1385



Dear Counsel:

EXHIBIT NO. IV

The above-entitled case(s) has/have been tentatively listed on the merits on **Wednesday, October 22, 2003**, in **PITTSBURGH, PA**. It may become necessary for the panel to move this case to another day within the week of October 20, 2003. Counsel will be notified if such a change occurs.

The panel will determine whether there will be oral argument and if so, the amount of time allocated therefor. (See Third Circuit Internal Operating Procedures, Chapter 2.1.) No later than one (1) week prior to the disposition date you will be advised whether oral argument will be required, the amount of time allocated by the panel, and the specific date on which argument will be scheduled.

Kindly acknowledge receipt hereof, **within seven (7) days**, on the enclosed copy of this letter and advise the name of the attorney who will present oral argument. In addition, please indicate whether or not s/he is a member of the bar of this Court. Membership is not necessary if counsel represents a U.S. government agency or officer thereof or if the party is appearing pro se. If the attorney is not a member of the bar of this Court, an application for admission will be forwarded, which should be completed and returned to this office without delay.

Very truly yours,  
MARCIA M WALDRON, Clerk

*Mary A. Collins*  
By: Mary A. Collins, Calendar Clerk,  
Direct Dial: (267) 299-4936

MMW:mac

Receipt acknowledged by: Thomas W Patton Date: 8/16/03

Name of attorney arguing: Thomas W Patton

Representing Appellant/Petitioner (X), Appellee/Respondent( ), Intervenor ( ), Amicus ( )

Member of Bar: Yes X No

**FEDERAL PUBLIC DEFENDER**

**WESTERN DISTRICT OF PENNSYLVANIA**

1111 RENAISSANCE CENTRE

1001 STATE STREET

ERIE, PENNSYLVANIA 16501

PHONE: 814/455-8089

FAX: 814/455-8624

**SHELLEY STARK**  
*Federal Public Defender*

**THOMAS W. PATTON**  
*Assistant Federal Public Defender*

December 3, 2003

James C. Carter  
c/o Erie County Prison  
1618 Ash Street  
Erie, PA 16503

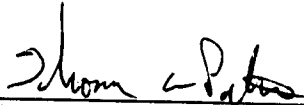
EXHIBIT NO V

Re: USA v. James C. Carter  
No. 02-11 Erie

Dear Mr. Carter:

Enclosed is a copy of the 3<sup>rd</sup> Circuit Court of Appeals opinion affirming the District Court's decision with regard to your case. As we discussed, I will not be filing a petition for writ of certiorari with the U.S. Supreme Court.

Very truly yours,



Thomas W. Patton  
Assistant Federal Public Defender

TWP/emd

Enclosure

N:\WPDATA\WPDOCS\CURRENT\Carter, James\Appeal\opinion ltr.wpd

APPENDIX-C.

EXHIBIT NO. VI

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 03-1385

United States v. Carter

To: Clerk

1) Pro Se Motion for Rehearing Nunc Pro Tunc

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The foregoing petition for rehearing is held in abeyance in order to allow the appellant an opportunity to file a motion seeking leave to file the petition for rehearing out of time. The petition was due to be filed in November, 2003. This Court may permit an act to be done beyond the time permitted only on the basis of "good cause shown." Rule 26(b), Federal Rules of Appellate Procedure. The appellant has made no such showing in his submission. Accordingly, the appellant is afforded a time period of fourteen (14) days from the date of this order to file a motion seeking leave to file the petition out of time.

Within that fourteen (14) day period the appellant must submit one additional copy of the petition if he is seeking only panel rehearing and 12 additional copies if he is seeking rehearing by the Court en banc.

If the required copies and motion are not filed within the specified fourteen (14) day period, the petition will be deemed to be withdrawn and no further action will be taken in regard to it.

For the Court,

*Marcia M. Waldron*

Clerk

Dated: February 23, 2004

RLS/cc: JCC  
BRS  
KRL  
TWP

APPENDIX-E.2.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

March 15, 2004

No. 03-1385

United States of America

v.

James C. Carter, Appellant

(Western District of Pennsylvania (Erie) No. 02-cr-00011E)

Present: **ROSENN, CIRCUIT JUDGE.**

Motion by Appellant James C. Carter, Pro Se, to File the Petition for Rehearing Out of Time.

Rebecca Simon

Case Manager

267-299-4947

For the Court's information, please find a copy of the Clerk's 2/23/04 Order directing Appellant to File the Out of Time Motion.

Mandate Issued: 12/29/03

ORDER

The foregoing motion to file the petition for rehearing out of time is granted.

EXHIBIT NO VII

By the Court,

/s/ Max Rosenn

Circuit Judge

Dated: March 24, 2004

LLD/cc: Mr. James C. Carter  
Thomas W. Patton, Esq.  
Bonnie R. Schlueter, Esq.  
Kelly R. Labby, Esq.

APPENDIX-E.1.

EXHIBIT NO VIII

ENTRY # 33 of U.S. DISTRICT COURT Docket Sheet  
Dated March 16, 2005

DPS-206

April 14, 2005

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 05-1677

UNITED STATES OF AMERICA

v.

JAMES C. CARTER,  
Appellant

(W. D. Pa. Crim. No. 02-cr-00011)

Present: ROTH, BARRY and SMITH, Circuit Judges

Submitted are:

- (1) The foregoing appeal by the Clerk for possible dismissal due to a jurisdictional defect; and
- (2) The appellant's notice of appeal, which may be construed as a request for a certificate of appealability

in the above-captioned case.

Respectfully,  
Clerk

MMW/SR/dmm

ORDER

In February 2003 Carter was sentenced, *inter alia*, to 151 months' imprisonment. This Court affirmed and the Supreme Court denied Carter's certiorari petition. Meanwhile, in March 2003, while his appeal was pending, Carter filed a motion to amend his sentence alleging ineffective assistance of counsel but also stating that if the motion interfered with his appeal in any way the court should "retract" it. By order dated March 17, 2003, but not entered until November 14, 2004, the District Court denied the motion in light of Carter's pending appeal. On February 25, 2005, Carter filed a notice of appeal dated February 23, 2005.

Pursuant to Fed. R. App. P. 4(a)(1)(B) Carter's notice of appeal was due within sixty days of entry of the District Court's order. The record does not indicate that any of

DPS 206

United States v. Carter

No. 05-1677

Page 2

the grounds for extending deadline as set forth in Rule 4 (e.g. Rules 4(a)(4)-(6) and 4(c)) applies, and Carter has not provided other reasons for excusing the delay. His appeal is therefore dismissed as untimely. Browder v. Director of Dep't of Corrections, 434 U.S. 257, 264 (1978) (time periods prescribed for filing a notice of appeal are "mandatory and jurisdictional").

By the Court,

/s/ D. Brooks Smith  
Circuit Judge

Dated: May 17, 2005

DMM/cc: James C. Carter

Laura S. Irwin, Esq.

Christian A. Trabold, Esq.

EXHIBIT NO. IX

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

**No. 03-1385**

United States v. Carter


To: Clerk

- 1) Pro Se "Supplemental Amendment"

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The foregoing submission cannot be accepted for filing. The order denying rehearing was entered April 6, 2004, but the "supplement" was not received until April 22, 2004. At that time all proceedings in regard to the appeal had concluded and this Court no longer had authority to reconsider or modify its decision.

For the Court,

  
Clerk

Dated: April 26, 2004

RLS/cc: JCC  
TWP  
BRS  
KRL

EXHIBIT NO. X

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 03-1385

UNITED STATES OF AMERICA

v.

JAMES C. CARTER,

Appellant

Present: SCIRICA, Chief Judge, SLOVITER, NYGAARD, ALITO,  
ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH,  
CHERTOFF, FISHER, and ROSENN,\* Circuit Judges.

SUR PETITION FOR PANEL REHEARING  
OR REHEARING EN BANC

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is DENIED.

By the Court:

/s/ Max Rosenn Sr.  
Circuit Judge

Dated: April 6, 2004

RLS/cc: JCC

TWP

BRS

KRL

\* Honorable Max Rosenn, Senior Circuit Judge, was a member of the original panel and voted as to panel rehearing only.

APPENDIX -A.